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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,742	08/14/2003	Wilhelm Geis	A91717	1741

30008 7590 05/01/2006
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EXAMINER

DOVE, TRACY MAE

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/604,742

Applicant(s)

GEIS ET AL.

Examiner

Tracy Dove

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the communication filed on 2/17/06. Applicant's arguments have been considered, but are not persuasive. Claims 1-3, 5, 6 and 8-10 are pending.

Claims Analysis

Claims 1 and 10 recite "for an electric power tool that comprises a tool housing with an electric motor arranged therein and a handle connected to the tool housing", which is not given patentable weight because it is an intended use limitation. All limitations of the claimed invention that recite elements of the electric power tool are not given patentable weight because the claims recite "A battery pack".

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5, 6 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "a support surface extending substantially in the longitudinal direction" and further recites "the individual battery cells in the protective housing are arranged in the longitudinal direction". However, as shown in Figures 3-4 of the specification the support surface and the individual battery cells do extend in the same direction.

Claim 1 recites "individual battery cells", "sequentially behind one another in two parallel rows", "the first and last individual battery cells of the two rows" and "at least one of the individual battery cells of each one of the two parallel rows arranged between the first and last

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individual battery cells”, which are all confusing and unclear. It is unclear what battery cell arrangement applicant is attempting to claim. Furthermore, “the first and last individual battery cell of the two rows” lacks antecedent basis in the claim.

Furthermore, claim 1 requires the “two parallel rows” to define “a first portion of the protective housing and a first portion of the support surface”. Thus, it is unclear how the any of the cells of the “two parallel rows” are contained in the “second portion” if the “two parallel rows” define “the first portion”.

Claim 6 recites “the at least one row”, which is indefinite and lacks proper antecedent basis. Claim 1 recites “two parallel rows”.

Claim 10 recites “a support surface extending substantially in the longitudinal direction” and further recites “the individual battery cells in the protective housing are arranged parallel to the longitudinal direction”. However, as shown in Figures 3-4 of the specification the support surface and the individual battery cells do extend in the same direction.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recites “the individual battery cells...are arranged parallel to the longitudinal direction...sequentially behind one another in at least one row...wherein at least one of the individual battery cells of each of the at least one row...being displaced laterally outwardly relative to the longitudinal center axis”. Claim 10 then further recites “wherein two of the individual battery cells are positioned adjacent to one another in the transverse direction within the displaced row”. It is unclear how the two cells from a single row are “adjacent” in a transverse direction if they are “displaced laterally outwardly”.

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Furthermore, claim 10 requires the “at least one row” to define “a first portion of the protective housing and a first portion of the support surface”. Thus, it is unclear how the any of the cells of the “at least one row” are contained in the “second portion” if the “at least one row” defines “the first portion”.

In claim 10 the added limitation “at least one additional individual battery cell” is indefinite because it is unclear how many cells are contained in the housing and what “additional” would encompass. Note claim 10 states “provides a space for at least one additional individual battery cell”, thus only the “space” and not the additional cell is required by the claim.

In claim 10 “the first and last individual battery cells” lacks proper antecedent basis.

At least claims 1 and 10 should be carefully amended to clearly claim the invention. Both claims contain numerous 35 U.S.C. 112, 2nd, issues and require appropriate correction. To the extent the claims are understood in view of the numerous 35 U.S.C. 112 rejections above, note the following prior art rejections.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kumar et al., US 6,018,227.

Kumar teaches a battery pack having a number of rechargeable NiCd cells 276. Figure 9 shows the inside of the battery pack 22 (11:40-45). Figure 7 shows a battery body 36 (protective

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housing) having a first housing side with a receiving portion and a second housing side with a support surface. Figure 9 shows rows of batteries wherein some of the batteries have been laterally outwardly displaced. Figure 9 also shows some portions of the support surface are wider than other portions of the support surface. Thus the claims are anticipated.

*

Claims 1-3, 5 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kopras, US 5,902,080.

Kopras teaches a power tool with a detachable battery pack. The battery pack includes an enclosed housing in which rechargeable batteries are contained. The battery pack case may be formed in two asymmetric halves wherein the two halves are joined together to form the complete battery pack. An inward half is adjacent a motor housing of the power tool and an outward half is opposite the motor housing. A receiving part is activated by spring clamps (6:21-62). As shown in Figure 5, some of the battery cells contained in the battery pack are displaced laterally outwardly and the portion of the pack not containing the receiving part is wider than the portion of the pack containing the receiving part. Thus the claims are anticipated.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5, 6 and 8-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Dove whose telephone number is 571-272-1285. The examiner can normally be reached on Monday-Thursday (9:00-7:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 27, 2006



TRACY DOVE
PRIMARY EXAMINER